

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

GENERAL ELECTRIC CAPITAL)
CORPORATION, a Delaware corporation;)
NMHG FINANCIAL SERVICES, INC., a)
Delaware corporation; GE CAPITAL)
COMMERCIAL INC., a Delaware corporation;)
COLONIAL PACIFIC LEASING)
CORPORATION, a Delaware corporation; and)
GE COMMERCIAL DISTRIBUTION)
FINANCE CORPORATION, a Delaware)
corporation,)
Plaintiffs,)
v.)
KMH SYSTEMS, INC., an Ohio corporation,)
Defendant.)

Case No. 3:13-cv-00409

ORDER OF REPLEVIN

This matter comes before the Court on the Motion of Plaintiffs, General Electric Capital Corporation, NMHG Financial Services, Inc., GE Capital Commercial Inc., Colonial Pacific Leasing Corporation, and GE Commercial Distribution Finance Corporation (collectively, “GE”), for Order of Replevin (the “Motion”). Due notice of the Motion having been given; the Court having considered the Verified Complaint, the Motion, the Affidavit of William Craig Barber (the “Barber Affidavit”), and GE’s Memorandum in Support of the Motion (“Memorandum”), together with the exhibits attached to these documents; and the Court being otherwise duly advised in the premises;

IT IS HEREBY PROVISIONALLY FOUND THAT:

A. KMH Systems, Inc. (“KMH”) is in payment default under the March 6, 2003 Lease Agreement (“NMHG Lease”) with NMHG Financial Services, Inc. (“NMHG”), pursuant to which NMHG leased certain equipment to KMH.

B. On or about May 17, 2011, GE Commercial Distribution Finance Corporation (“GECDF”) entered into an Inventory Financing Agreement (together as amended by the October 9, 2013 Modification Agreement, the “Financing Agreement”) with KMH whereby GECDF agreed to extend credit to KMH to enable KMH to purchase inventory. As security for all its obligations under the Financing Agreement, KMH granted to GECDF a security interest in all personal property of KMH which was financed under the Financing Agreement (the “Security Interest”). Pursuant to the Financing Agreement, the Security Interest also secured all indebtedness and obligations of any nature of KMH to GECDF or to any of GECDF’s affiliates or entities under common control, whether or not such obligations arose under the Financing Agreement. KMH is in non-payment default under the Financing Agreement for failure to comply with the terms of the Modification Agreement.

D. GE owns and KMH is in wrongful possession of the equipment set forth on the schedule attached hereto as Exhibit A (the “Equipment”).

F. KMH has defaulted on the NMHG Lease, the Financing Agreement, and other Leases with Plaintiffs as set forth in the Verified Complaint (collectively, the “Agreements”) by failing to make the payments due and owing thereunder.

G. KMH is in further default for its failure to provide GECDF with a signed letter of intent or similar written proposal detailing the payoff of its obligations under the Financing Agreement.

H. KMH is in further default of the Agreements due to its failure to allow GE to repossess the Equipment upon demand, as set forth in the Agreements.

I. The Agreements entitle GE to repossess and remove the equipment in the event of a payment default or other default by KMH.

J. To date, GE has not reclaimed the Equipment, nor has KMH returned the equipment.

K. The Equipment is presently in possession of KMH and/or its sublessees and located at or around 6900 Poe Avenue, Dayton, Ohio or such additional location as may be revealed to GE in the future. KMH continues to use the Equipment in its ordinary and customary manner as part of their business operations.

L. There is no reason that KMH could assert which would make its continued possession of the Equipment not be wrongful.

M. GE is being damaged by KMH's continued use of the Equipment in that the deterioration of the Equipment through KMH's continued use lessens the value and resale price that GE may obtain if it recovers and resells the Equipment. Given that GE will likely not be able to collect the full amount it is owed from KMH, such continued use directly injures GE.

N. The Equipment was not taken for a tax, assessment, or fine pursuant to statute, or seized under execution of judgment against the property of GE.

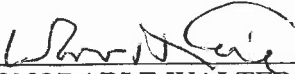
O. GE has agreed to post the bond required by Section 2737.10 of the Ohio Revised Code.

Based on these provisional findings, the Verified Complaint, the Motion, the Memorandum, and the exhibits attached thereto, and the Barber Affidavit, it is hereby ORDERED as follows:

1. The Motion is granted;
2. Any and all objections to the Motion are overruled in their entirety;
3. GE has shown that there is probable cause to support the Motion, as it is likely that GE will obtain judgment against KMH that entitles GE to permanent possession of the Equipment;
4. GE is entitled to immediate possession of the Equipment;
5. KMH and any of its responsible managing agents, officers, directors, or employees and any other person or firm having actual notice of this Order are hereby ordered to immediately surrender the Equipment in their possession or control to GE, and forthwith take all actions necessary to allow GE to obtain access to and possession of the Equipment;
6. KMH and its responsible managers, agents, officers, and directors, and each of them, are directed to within two (2) days of entry of this Order, produce to GE copies of all subleases with respect to each and every item of the Equipment, and identify the precise location of each item of the Equipment.
7. GE, either on its own or through its agents, is entitled to enter onto the premises at which the Equipment is located and remove the Equipment, and any person or firm having actual notice of this Order is hereby enjoined from restricting the access of GE to the Equipment;
8. GE is entitled to seek the assistance of the Sheriff of Montgomery County (or any other county in which the Equipment is located) to remove the Equipment and to deliver it to GE, and the Sheriff is hereby ordered to cooperate with any such removal and delivery;
9. Upon repossession of the Equipment by GE, GE shall be free to dispose of said Equipment pursuant to the terms set forth in the Agreements;
10. Except as specifically provided herein, nothing contained in this Order shall constitute a waiver of GE's rights and remedies in connection with the documents described herein or otherwise, including, without limitation, the right to seek deficiency judgments against KMH and the right to seek recovery under any guaranty agreements; and
11. Defendants may recover the Equipment by filing a bond with the Court in the amount of \$ to be determined during any conference call
Requested by A,

IT IS SO ORDERED

Dated: December 20, 2013



HONORABLE WALTER HERBERT RICE
UNITED STATES DISTRICT JUDGE

Order Prepared By:

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EXHIBIT A
SCHEDULE OF EQUIPMENT

Dist/Mfg Name	Model #	Serial #
YALE	ERC050RG	A908N02898C
YALE	ERC050RG	A908N04195D
YALE	ERC050RG	A908N04210D
YALE	ERC050RG	A908N04211D
YALE	ERC050RG	A908N04212D
YALE	ERC050RG	A908N04211D
YALE	ERC050RG	A908N04212D
YALE	ERC050RG	A908N04737D
YALE	ERC050RG	A908N04160D
YALE	ERC050RG	A908N04161D
YALE	ERC050RG	A908V01853B
YALE	ERC050RG	A908V01854B
YALE	ERP040T	F807N07488H
YALE	ERP040T	F807N07492H
YALE	ERP040T	F807N07530H
YALE	ERP040T	F807N07493H
YALE	ERP040T	F807N06648F
YALE	ERP040T	F807N07497H
YALE	ERP040T	F807N07494H
YALE	ERP040T	F807N07466H
YALE	ERP040T	F807N06487F
YALE	ERP040T	F807N06730F
YALE	ERP040T	F807N06590F
YALE	GLC030VXNNUSE08	C809V03955F
YALE	GLC030VXNURE082	C809V04208F
YALE	GLC030VXNURE082	C809V04204F
YALE	GLC030VXNURE082	C809V04206F
YALE	GLC030VXNURE082	C809V04203F
YALE	GLC030VXNURE082	C809V04200F
YALE	GLC030VXNURE082	C809V04209F
YALE	GLC030VXNURE082	C809V04207F
YALE	GLC030VXNURE082	C809V04205F
YALE	GLC030VXNURE082	C809V04213F
YALE	GLC030VXNURE082	C809V04274F
YALE	GLC030VXNURE082	C809V04268F
YALE	GLC030VXNURE082	C809V04275F
YALE	GLC030VXNURE082	C809V04273F
YALE	GLC030VXNURE082	C809V04269F
YALE	GLC030VXNURE082	C809V04214F
YALE	GLC030VXNURE082	C809V04336F

EXHIBIT
A

Dist/Mfg Name	Model #	Serial #
YALE	GLC030VXNURE082	C809V04337F
YALE	GLC030VXNURE082	C809V04334F
YALE	GLC030VXNURE082	C809V04338F
YALE	GLC030VXNURE082	C809V04339F
YALE	GLC035VX	C809V04975H
YALE	GLC035VX	C809V04978H
YALE	GLC035VX	C809V04987H
YALE	GLC035VX	C809V04991H
YALE	GLC050VX	A910V15608H
YALE	GP110VX	H813V01540K
YALE	GP110VX	H813V01654K
YALE	GP110VX	H813V01652K
YALE	GP110VX	H813V01653K
YALE	GP110VX	H813V01650K
YALE	GP110VX	H813V01656K
HYSTER	E50XM	G108N02729C
HYSTER	E50XM	G108N02742C
HYSTER	E50XM	G108N02743C
HYSTER	E50XM	G108N02744C
HYSTER	E50XM	G108N02748C
HYSTER	E50XM	G108V01750B
HYSTER	E50XM	G108V01751B
HYSTER	E50XM	G108V01752B
HYSTER	E60XM	G108N05575D
HYSTER	E60XM	G108N05576D
HYSTER	E60XM	G108N05577D
HYSTER	E60XM	G108N05578D
HYSTER	E60XM	G108N05579D
HYSTER	E60XM	G108N05580D
HYSTER	E60XM	G108N05581D
HYSTER	E60XM	G108N05582D
HYSTER	E60XM	G108N05583D
HYSTER	E60XM	G108N05584D
BANDIT	MODEL-1590	4FMUS1812CR002533
BOBCAT	942601	94260100653
BOBCAT	942601	94260100675
CASCADE	(09)25DCCS35	193989-8RO
CASCADE	(09)25DCCS35	193989-1RO
CASCADE	(09)25DCCS35	229260-1
CASCADE	(09)25DCCS35	PTL514989-3
CASCADE	(09)35DPPS	490-T-26
CASCADE	(09)35DPPS	576575-T6
CASCADE	(10)25DCCS35	134973-02

Dist/Mfg Name	Model #	Serial #
CASCADE	(10)25DCCS35	193989-6RO
CLARK	(12) ECX25	ECX36019949653KF
CLARK	(12) OSX15	OSX1501719798KF
FORD	E350	1FTSE3EL8CDA04986
FORD	E350	1FTSE3EL3CDA46806
FORD	E350	1FTSE3EL9CDA46809
FORD	E350	1FTSE3EL5CDA46807
FORD	E350	1FTSE3EL7CDA46808
FORD	E350	1FTSE3EL7CDA46811
FORD	E350	1FTSE3EL5CDA46810
FORD	E350	1FTSE3EL9CDA46812
FORD	E350	1FTSE3EL0CDA46813
FORD	E350	1FTSE3EL2CDA46814
FORD	E350	1FTSE3EL4CDA46815
FORD	E350	1FTSE3EL6CDA46816
FORD	E350	1FTSE3EL2BDA51879
FORD	F150	1FTFW1EF6BFA35976
FORD	F150	1FTEX1EM4BFC47184
FORD	F150	1FTFW1ET1CFB11143
FORD	F150	1FTFW1ET3CFB11144
FORKLIFT	S060	753780856J
FORKLIFT	S060	753880856J
GENERAC	QT02515ANSX	7082333
GENERAC	QT02515JNSX	7261221
GENERAC	QT06024KNAX	7261239
GENERAC	RTSN600K3	7251608
GENERAC	RTSX100A3	7077284
HELI AMERICAS	(13)CPYD25TY	230250R4693
HYSTER	(08)S155FT	E024V01548F
INDUSTRIAL EQUI	(12) 9030200	J000033185-1
INDUSTRIAL EQUI	13-RG27	RG270060613
INTERNATIONAL	8600 DAYCAB	1HSHXahr59H131888
JCB	260	GEO260WVJC1747481
JCB	10-VMT260	GETVT260L92802383
JCB	260 T4	GEO260WVCC2196089
JCB	260T	GEO260TVAB1746578
JCB	515-40	JCB51540V01768947
JCB	8085 ZTS	JCB08085H01072866
ENERSYS	18-E85-21	RIC595570
ENERSYS	18-E85-21	RIC595571
ENERSYS	18-E85-21	RIC595572
ENERSYS	18-E85-21	RIC595573
ENERSYS	18-E85-21	RIC595574

US_ACTIVE-115590253 v1

US_ACTIVE-115599800 v1

Dist/Mfg Name	Model #	Serial #
ENERSYS	18-E85-21	RIC596020
ENERSYS	18-E85-21	RIC596019
ENERSYS	18-E85-21	RIC596021
ENERSYS	18-E85-21	RIC597962
ENERSYS	18-E85-21	RIC597963
ENERSYS	18-E85-21	RIC597966
ENERSYS	F300AT24	29441
ENERSYS	HF-EH3-18-1200Y	IB59183
ENERSYS	HF-EH3-18-1200Y	IB59182
ENERSYS	HF-EH3-18-1200Y	IB59181
ENERSYS	HF-EH3-18-1200Y	IB59180
ENERSYS	HF-EH3-18-1200Y	IB59179
ENERSYS	HF-EH3-18-1200Y	IB59198
ENERSYS	HF-EH3-18-1200Y	IB59199
ENERSYS	HF-EH3-18-1200Y	IB59120
ENERSYS	HF-EH3-18-1200Y	IB59184
ENERSYS	HF-EH3-18-1200Y	IB59185
ENERSYS	HF-EH3-18-1200Y	IB59186
RAYCO	(13) RG27	RG270030613
REDMAX/ZENOAH	580357201	00010@004724
REDMAX/ZENOAH	EBZ6500RH	675810130300206
REDMAX/ZENOAH	EBZ7500RH	670990130500286
REDMAX/ZENOAH	EBZ7500RH	670990130500277
REDMAX/ZENOAH	EBZ7500RH	670990130500282
REDMAX/ZENOAH	EBZ8500RH	671000130500389
REDMAX/ZENOAH	EBZ8500RH	671000130500381
REDMAX/ZENOAH	EBZ8500RH	671000130500380
TERMINAL INVEST	(13) PROSPOT	1T9TS3A87DR825123
TERMINAL INVEST	ISB2010	1T9TS3A84CR825532
THOMAS EQUIPMEN	(12) ML25G1	ML001221
YALE	(05) GLC060T	A875B34805C
YALE	ERP040VT	G807N03177J
YALE	GC050LX	A967V01579H
YALE	GC050LX	A967V01577H
YALE	GC050LX	A967V01727J
YALE	GC050LX	A967V01729J
YALE	GC050LX	A967V01731J
YALE	GC050LX	A967V01732J
YALE	GC060VX	A910V18368J
YALE	GC060VX	A910V18377J
YALE	GC060VX	A910V18383J
YALE	GC060VX	A910V18369J
YALE	GC060VX	A910V18384J

Dist/Mfg Name	Model #	Serial #
YALE	GP060VX	B875V06873J
YALE	GP060VX	B875V07205J
YALE	GP060VX	B875V07204J
YALE	GP060VX	B875V07206J
YALE	GP060VX	B875V07207J
YALE	GP090VX	F813V03247F
YALE	MPB040-E	B827N44967J
YALE	MPB040-E	B827N44977J
YALE	MPB040-E	B827N45235J
YALE	MTR007-F	B903N01692K
YALE	MTR007-F	B903N01694K
YALE	NR040DA	A295N04262J